

PUBLIC CHAPTER NO. 1149

SENATE BILL NO. 3591

By Ketron, Tate, Barnes, Black

Substituted for: House Bill No. 3163

By Curtiss, Pitts, Shepard, Matheny, Tidwell, Carr, Lollar, Eldridge, Cooper, Brown, White, Moore, McDonald, Curtis Johnson, Stewart, Lundberg, McDaniel, Harry Brooks, Ford, Roach, Towns

AN ACT to amend Tennessee Code Annotated, Title 1, Chapter 3; Title 29; Title 39, Chapter 11; Title 50; Title 56, Title 68 and Chapter ____ of the Public Acts of 2010 (Ex. Sess.)(Senate Bill No. 1/House Bill No. 7 of the First Extraordinary Session), relative to workers' compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 1 of the Public Acts of 2010 (Ex. Sess.) (Senate Bill No. 1/House Bill No. 7 of the First Extraordinary Session) is amended by deleting Section 2 of the chapter in its entirety and substituting instead the following:

SECTION 2. Tennessee Code Annotated, Section 50-6-113, is amended by deleting subsections (f) and (g) in their entireties.

SECTION 2. Chapter 1 of the Public Acts of 2010 (Ex. Sess.) (Senate Bill No. 1/House Bill No. 7 of the First Extraordinary Session) is amended by deleting the language "March 28, 2011" wherever it occurs in Section 3 of the chapter and substituting instead the language "March 1, 2011".

SECTION 3. Tennessee Code Annotated, Section 50-6-102(10), is amended by adding a new, appropriately designated subdivision:

() "Employee" does not include a construction services provider, as defined in § 50-6-901, who is listed on the construction services provider workers' compensation exemption registry established pursuant to Part 9 of this chapter if the construction services provider is not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services and the construction services provider is rendering services on a:

(i) Construction project that is not a commercial construction project, as defined in § 50-6-901; or

(ii) Construction project that is a commercial construction project, as defined in § 50-6-901, and the general contractor for whom the construction services provider renders construction services complies with § 50-6-914(b)(2);

SECTION 4. Tennessee Code Annotated, Section 50-6-104, is amended by adding the following new subsection:

(d) This section shall not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, Part 9 of this chapter shall apply to such officer, member, partner or sole proprietor.

SECTION 5. Tennessee Code Annotated, Section 50-6-113, is amended by adding a new, appropriately designated subsection thereto:

(.) This section shall not apply to a construction services provider, as defined by § 50-6-901.

SECTION 6. Tennessee Code Annotated, Section 50-6-117, is amended by adding the following language to the end of the section:

This section shall not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, Part 9 of this chapter shall apply to such officer, member, partner or sole proprietor.

SECTION 7. Tennessee Code Annotated, Section 50-6-405(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d)(1) It is an offense for any employer whose employee is entitled to the benefits of this chapter:

(A) To require such employee to pay any portion of the insurance premium paid by the employer; or

(B) To deduct any portion of such premium from the wages or salary of such employee.

(2) A violation of subdivision (d)(1) is a Class C misdemeanor.

(3)(A) In addition to any criminal penalty assessed for a violation of (d)(1), the commissioner is authorized to impose a civil penalty of up to an amount equal to the amount of premiums deducted from such employee's wages or salary.

(B) If a civil penalty is assessed pursuant to subdivision (d)(3)(A), the commissioner shall assess the penalty in a specific dollar amount to be paid directly to the employee.

SECTION 8. Tennessee Code Annotated, Section 50-6-412(d)(2), is amended by deleting the language "one and one half (1 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater

of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium".

SECTION 9. Tennessee Code Annotated, Section 50-6-412(e)(1), is amended by deleting the language "one and one half (1 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium".

SECTION 10. Tennessee Code Annotated, Section 50-6-412(f), is amended by deleting the language "one and one half (1 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium".

SECTION 11. Tennessee Code Annotated, Section 50-6-412(f)(4), is amended by deleting the language "two and one half (2 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "two and one half (2 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of two thousand dollars (\$2,000) or two and one half (2 1/2) times the average yearly workers' compensation premium".

SECTION 12. Tennessee Code Annotated, Section 50-6-412, is amended by adding the following new subsections (g) and (h) and redesignating existing subsections accordingly:

(g) The commissioner shall notify the secretary of state when any employer engaged in the construction industry:

(1) Fails to secure payment of compensation, as required by this chapter; and

(2) When any employer who has failed to secure payment of compensation, as required by this chapter, has secured payment of such compensation.

(h)(1) In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two (2) or more times within a five (5) year period, then the commissioner shall issue a monetary penalty against the employer that is the greater of three thousand dollars (\$3,000) or three (3) times the average yearly workers' compensation premium for each second or subsequent violation.

(2)(A) In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two (2) or more times within a five (5) year period, such employer shall be permanently prohibited from obtaining an exemption pursuant to Part 9 of this chapter and the commissioner shall notify the secretary of state of such prohibition.

(B) For purposes of subdivision (h)(2)(A), "such employer" includes any construction services provider, as defined by § 50-6-901, who applies for or has ever received a workers' compensation exemption pursuant to Part 9 of this chapter using the same federal employer identification number as the employer who fails to comply with the requirements of this chapter.

SECTION 13. Tennessee Code Annotated, Title 50, Chapter 6, is amended by adding a new part thereto:

§ 50-6-901.

For purposes of this part, unless the context otherwise requires:

(1) "Active and in good standing as reflected in the records of the secretary of state" means a corporation, limited liability company, or partnership that is in existence, registered or authorized to transact business in this state as reflected in the records of the secretary of state; and in the case of a corporation, limited liability company, limited liability partnership, or limited partnership, such entity is in good standing with the Tennessee Department of Revenue;

(2) "Board" means the state board for licensing contractors;

(3) "Commercial construction project" means any construction project that is not:

(A) The construction, erection, remodeling, repair, improvement, alteration or demolition of one (1), two (2), three (3) or four (4) family unit residences not exceeding three (3) stories in height or accessory use structures in connection with the residences;

(B) The construction, erection, remodeling, repair, improvement, alteration or demolition of any building or structure for use and occupancy by the general public which, pursuant to § 62-6-112(f)(2), a small commercial building contractor is authorized to bid on and contract for; or

(C) Performed by any person, municipality, county, metropolitan government, cooperative, board, commission, district, or any entity created or authorized by public act, private act or general law to provide electricity, natural gas, water, waste

water services, telephone service, telecommunications service, cable service, or Internet service or any combination thereof, for sale to consumers in any particular service area;

(4) "Construction project" means the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking; provided, that if a general contractor contracts to erect, remodel, repair, improve, alter or demolish multiple buildings, structures or undertakings in one (1) contract, all such buildings, structures or undertakings described in such contract shall constitute one (1) construction project;

(5) "Construction services provider" or "provider" means any person or entity engaged in the construction industry;

(6) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation of a corporation that in the case of a domestic corporation is formed under the laws of this state pursuant to Title 48, Chapters 11-68, or in the case of a foreign corporation is authorized to transact business in this state pursuant to Title 48, Chapters 11-68; provided, that a domestic or foreign corporation is active and in good standing as reflected in the records of the secretary of state;

(7) "Direct labor" means the performance of any activity that would be assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320, but does not include:

(A) Classification code 5604, or any subsequent classification code, for construction executives, supervisors, or foremen that are responsible only for the oversight of laborers; or

(B) Classification code 5606, or any subsequent classification code, for project managers, construction executives, construction managers and construction superintendents having only administrative or managerial responsibilities for construction projects by exercising operational control indirectly through job supervisors or foremen;

(8) "Engaged in the construction industry" means any person or entity assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320;

(9) "Family-owned business" means a business entity in which members of the same family of the applicant have an aggregate of at least ninety-five percent (95%) ownership of such business;

(10) "General contractor" means the person or entity responsible to the owner or developer for the supervision or performance of substantially all of the work, labor, and the furnishing of materials in furtherance of the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking and who contracts directly with the owner or developer of the building, structure or other undertaking; "general contractor" includes a prime contractor;

(11) "Good standing with the Tennessee Department of Revenue" means the secretary of state has received and verified through electronic confirmation or a certificate of tax clearance issued by the Commissioner of Revenue that a corporation, limited liability company, limited liability partnership, or limited partnership is current on all fees, taxes, and penalties to the satisfaction of the commissioner;

(12) "Member of a limited liability company" means any member of a limited liability company formed pursuant to Title 48, Chapters 201–249 that is active and in good standing as reflected in the records of the secretary of state;

(13) "Members of the same family of the applicant" means parents, children, siblings, grandparents, grandchildren, stepparents, stepchildren, stepsiblings, or spouses of such, and includes adoptive relationships;

(14) "Partner" means any person who is a member of an association that is formed by two (2) or more persons to carry on as co-owners of a business or other undertaking for profit and such association is active and in good standing as reflected in the records of the secretary of state;

(15) "Person" means only a natural person and does not include a business entity;

(16) "Registry" means the construction services provider workers' compensation exemption registry established pursuant to this part and maintained by the secretary of state; and

(17) "Sole proprietor" means one (1) person who owns a form of business in which that person owns all the assets of such business.

§ 50-6-902.

(a) Except as provided in subsection (b), all construction services providers shall be required to carry workers' compensation insurance on themselves. The requirement set out in this subsection (a) shall apply whether or not the provider employs fewer than five (5) employees.

(b) To the extent there is no restriction on applying for an exemption pursuant to § 50-6-903, a construction services provider shall be exempt from subsection (a) if the provider:

(1) Is a construction services provider rendering services on a construction project that is not a commercial construction project and is listed on the registry;

(2) Is a construction services provider rendering services on a commercial construction project, is listed on the registry and such provider is rendering services to a person or entity that complies with § 50-6-914(b)(2);

(3) Is covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services;

(4) Is a sole proprietor or partner engaged in the construction industry doing work directly for the owner of the property;

(5) Is a sole proprietor or partner building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the sole proprietor or partner's own property for the sole proprietor or partner's own use and for which the sole proprietor or partner receives no compensation; or

(6) Is a provider whose employment at the time of injury is casual as provided in § 50-6-106.

(c) A subcontractor engaged in the construction industry under contract to a general contractor engaged in the construction industry may elect to be covered under any policy of workers' compensation insurance insuring the general contractor upon written agreement of the general contractor, regardless of whether such subcontractor is on the registry established pursuant to this part, by filing written notice of the election, on a form prescribed by the Commissioner of Labor and Workforce Development, with the department. It is the responsibility of the general contractor to file the written notice with the department. Failure of the general contractor to file the written notice shall not operate to relieve or alter the obligation of an insurance company to provide coverage to a subcontractor when the subcontractor can produce evidence of payment of premiums to the insurance company for the coverage. The election shall in no way terminate or affect the independent contractor status of the subcontractor for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the subcontractor or general contractor by providing written notice of the termination to the department and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting to the prior election and to the department.

(d) Nothing in this part shall be construed as exempting or preventing a construction services provider from carrying workers' compensation insurance for any of its employees. The requirement set out in this subsection (d) shall apply whether or not the provider employs fewer than five (5) employees.

§ 50-6-903.

(a) Except as provided in subsections (b) and (c), any construction services provider who meets one (1) of the following criteria may apply for an exemption from § 50-6-902(a):

(1) An officer of a corporation who is engaged in the construction industry; provided, that no more than three (3) officers of one (1) corporation shall be eligible for an exemption;

(2) A member of a limited liability company who is engaged in the construction industry if such member owns at least thirty percent (30%) of such company;

(3) A partner in a limited partnership, limited liability partnership or a general partnership who is engaged in the construction industry if such partner owns at least thirty percent (30%) of such partnership;

(4) A sole proprietor engaged in the construction industry;
or

(5) An owner of any business entity listed in subdivisions (1)-(3) that is family-owned; provided, no more than three (3) owners of one (1) family-owned business may be exempt from § 50-6-902(a).

(b)(1) Notwithstanding subsection (a), if a construction services provider is exempt from § 50-6-902 as an officer of a corporation, a member of a limited liability company, or a partner in a limited partnership, limited liability partnership or a general partnership, then no construction services provider of an affiliate of such an exempted provider shall be eligible to apply for or receive an exemption from § 50-6-902(a).

(2) As used in this subsection (b), affiliate with respect to the corporation, limited liability company, limited partnership, limited liability partnership or general partnership means:

(A) A person that directly or indirectly controls, is controlled by or is under common control with the entity;

(B) An officer of, or a person performing similar functions with respect to, the entity; or

(C) A director or partner of, or a person performing similar functions with respect to, the entity.

(c) A construction services provider shall only be eligible for and may only utilize one (1) exemption, regardless of the number of business entities with which the provider may be associated.

§ 50-6-904.

(a)(1)(A) Any construction services provider applying for an exemption from § 50-6-902(a) who has not been issued a license by the board shall obtain a construction services provider registration from the secretary of state at the same time such provider applies for such exemption.

(B) The secretary of state is authorized and directed to issue the construction services provider registration on behalf of the board. The secretary of state shall issue an identification number assigned to the provider's registration. The board shall obtain such identification number and other identifying information from the secretary of state.

(2) Any construction services provider requesting exemption from § 50-6-902(a) shall submit an application along with the required filing fees to the secretary of state. The applicant shall provide sufficient documentation for the secretary of state to assure that such applicant meets the requirements set out in § 50-6-902, including, but not limited to:

(A) The applicant's full legal name;

(B) The applicant's birth month;

(C) The applicant's physical address; provided, that the applicant may provide a post office box number for purposes of receiving mail from the secretary of state, as long as the applicant also provides a physical address for the business entity for which the applicant is an officer, member, partner or owner;

(D) A telephone number through which the applicant can be reached;

(E) The name of the business entity through which the applicant is seeking the workers' compensation exemption;

(F) The federal employer identification number issued to the applicant if a sole proprietor or a business

entity for which the applicant is an officer, member, partner or owner seeking exemption pursuant to § 50-6-903, and the last four (4) digits of the applicant's social security number;

(G) The contractor license number issued by the board to such applicant or the construction services provider registration number issued by the secretary of state to such applicant;

(H) A current license issued by a local government pursuant to § 67-4-723, if the business entity through which the applicant is seeking the workers' compensation exemption is required by law to obtain such license; and

(I) Any other information the secretary of state deems necessary to identify such applicant.

(3) The secretary of state shall verify that the applicant meets the qualifications set out in § 50-6-902 upon a review of its records and the records provided by such applicant.

(b) The application shall be on a form designed by the secretary of state and shall contain a statement that specifies the eligibility requirements for exemption, contain an attestation that the applicant meets the eligibility requirements and contain a statement that a false statement on such application is subject to the penalties of perjury set out in § 39-16-702.

(c) The application, as well as a process for submission of such application, shall be available through the secretary of state's Web site or by contacting the secretary of state's office in person or by mail.

§ 50-6-905.

(a) If a construction services provider's application delivered to the secretary of state meets the requirements of this part, as determined by the secretary of state, the secretary of state shall file the application and:

(1) Issue a notice to such provider that the provider is listed on the registry; and

(2) Publish on the registry, contained on the secretary of state's Web site, the provider's name and other identifying information, including, but not limited to:

(A) The full legal name of the provider;

(B) The specific identification number issued to the provider by the secretary of state upon filing the application;